

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹



Order Filed on June 30, 2023

by Clerk

U.S. Bankruptcy Court

District of New Jersey

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

STIPULATION AND CONSENT ORDER
BETWEEN THE DEBTORS AND SAMA PLASTICS CORP. AND SAMA WOOD LLC

The relief set forth on the following pages, numbered four (4) through seven (7), is hereby
ORDERED.

DATED: June 30, 2023

A handwritten signature in black ink, appearing to read "Vincent F. Papalia".

Honorable Vincent F. Papalia
United States Bankruptcy Judge

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

(Page | 2)

Debtors: BED BATH & BEYOND INC., *et al.*

Case No. 23-13359-VFP

Caption of Order: STIPULATION AND CONSENT ORDER BETWEEN THE DEBTORS AND SAMA PLASTICS CORP. AND SAMA WOOD LLC

This stipulation and consent order (the “Stipulation”) is made by and between the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and Sama Plastics Corp. and Sama Wood LLC (collectively, “Sama” and together with the Debtors, the “Parties”), by and through their respective duly authorized undersigned counsel.

Introduction

WHEREAS, on April 23, 2023 (the “Petition Date”), each of the Debtors commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Debtors’ chapter 11 cases (the “Chapter 11 Cases”) have been jointly administered for procedural purposes only pursuant to rule 1015(a) of the Federal Rules of Bankruptcy Procedure;

WHEREAS, prior to the Petition Date, Sama Plastics Corp. and Sama Wood LLC filed a verified complaint (the “Complaint”) against the Debtors and commenced the case styled as SAMA PLASTICS CORP. AND SAMA WOOD LLC V. BED, BATH & BEYOND, INC. (the “Prepetition Litigation”) in the Superior Court of New Jersey Law Division, Union County, where the Prepetition Litigation is currently pending, on account of, among other things, outstanding prepetition invoices (the “Prepetition Claim”);

WHEREAS, Sama and the Debtors are party to the Fixture Supplier Expectation Guidelines (the “Guidelines”). Pursuant to these Guidelines, Sama sells fixtures to the Debtors in exchange for a fee and stores the fixtures in its warehouse or other storage facilities (collectively, the “Warehouse”) until they are shipped to the Debtors’ stores. In accordance with the Guidelines,

(Page | 3)

Debtors: BED BATH & BEYOND INC., *et al.*

Case No. 23-13359-VFP

Caption of Order: STIPULATION AND CONSENT ORDER BETWEEN THE DEBTORS
AND SAMA PLASTICS CORP. AND SAMA WOOD LLC

the Debtors issued a letter to Sama on September 19, 2007 (the “September 19th Letter”) where Sama agreed to maintain a reasonable amount of inventory for the Debtors based on historical usage data for online order fulfillment. In accordance with the September 19th Letter, Sama stored inventory and related items that were being stored by Sama for the Debtors and were the subject of the Prepetition Litigation (collectively, the “Stored Fixtures”) at the Warehouse on behalf of the Debtors. To date, Sama has incurred costs and continues to incur costs for storing the Stored Fixtures in the Warehouse during the pendency of these Chapter 11 Cases;

WHEREAS, Sama may hold certain claims and causes of action against the Debtors, their related parties, and their estates, which may include a postpetition claim or cause of action or administrative expense claim under section 503(b) of the Bankruptcy Code or otherwise (collectively, the “Potential Postpetition Claims”);

WHEREAS, upon the commencement of the Chapter 11 Cases, the automatic stay of section 362 of the Bankruptcy Code (the “Automatic Stay”) came into effect and stayed certain actions against the Debtors, including any efforts by Sama to utilize, sell, or otherwise dispose of the Stored Fixtures;

WHEREAS, the Debtors consent to relief from the Automatic Stay on the terms and conditions set forth in this Stipulation for the exclusive purpose of allowing Sama to reclaim the Stored Fixtures and utilize, sell, or dispose of them as it deems necessary; and

WHEREAS, Sama’s relief from the Automatic Stay will benefit the Debtors’ bankruptcy estates by resolving the Potential Postpetition Claims.

(Page | 4)

Debtors: BED BATH & BEYOND INC., *et al.*

Case No. 23-13359-VFP

Caption of Order: STIPULATION AND CONSENT ORDER BETWEEN THE DEBTORS
AND SAMA PLASTICS CORP. AND SAMA WOOD LLC

**NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE
PARTIES HERETO ACKNOWLEDGE RECEIVING, IT IS HEREBY STIPULATED,
AGREED AND ORDERED AS FOLLOWS:**

1. The recitals set forth above are hereby made an integral part of the Parties' Stipulation and are incorporated herein.

2. This Stipulation is subject to and conditioned upon the entry of a final order of the Court approving this Stipulation (the "Stipulation Effective Date"). Prior to the Stipulation Effective Date, nothing (including the Recitals) contained in this Stipulation, any submissions filed seeking an order from the Court approving this Stipulation, or any correspondence or other communications related to the negotiations, drafting or approval of this Stipulation, shall be argued or deemed to be an admission against any Party's interest in any litigation by and between any parties, and the Parties shall be automatically returned to their respective positions status quo ante.

3. Upon the Stipulation Effective Date:

- (a) the Automatic Stay shall be deemed modified with respect to the Stored Fixtures for the sole purpose of permitting Sama to utilize, sell, or dispose of the Stored Fixtures as it deems necessary; and
- (b) Sama will waive all rights to assert, and agrees not to assert, any Potential Postpetition Claim against the Debtors or their estates or related parties.

4. This Stipulation is the entire agreement between the Parties with respect to the subject matter hereof. This Stipulation supersedes any and all agreements, whether written or oral, that may have previously existed between the Parties with respect to the matters set forth herein. No statements, promises, or representations have been made by any Party to any other, or relied upon, and no consideration has been offered, promised, expected, or held out other than as expressly provided for herein.

(Page | 5)

Debtors: BED BATH & BEYOND INC., *et al.*

Case No. 23-13359-VFP

Caption of Order: STIPULATION AND CONSENT ORDER BETWEEN THE DEBTORS
AND SAMA PLASTICS CORP. AND SAMA WOOD LLC

5. The Parties, by and through their undersigned counsel, each represent and warrant that the undersigned is fully authorized and empowered to execute and deliver this Stipulation on behalf of, and to bind, each Party, as applicable, to the terms and conditions of this Stipulation.

6. Each of the Parties further acknowledges that it has been fully advised with respect to its rights and obligations under this Stipulation by counsel of its own choosing. Each of the Parties has consulted with counsel of its own choosing and has had adequate opportunity to make whatever investigation or inquiry it deems necessary or desirable with respect to the subject matter and terms of this Stipulation.

7. In the event of any ambiguity in this Stipulation, no inferences shall be drawn against any Party on the basis of authorship of this Stipulation. This Stipulation shall be binding and inure to the benefit of the Parties hereto, their successors and assigns, including without limitation, as to the Debtors, any chapter 7 or chapter 11 trustee, plan administrator or estate representative, and any liquidation trustee under the Debtors' confirmed plan of liquidation.

8. Nothing in this Stipulation or the relief sought herein shall constitute or be deemed:

- (a) an allowance of administrative expense claims under section 503(b) of the Bankruptcy Code;
- (b) an assumption or rejection of an executory contract or unexpired lease under section 365 of the Bankruptcy Code; (c) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (d) a waiver of the Debtors' right to dispute any claim on any grounds; (e) a promise or requirement to pay any claim; (f) an implication or admission that any particular claim is of a type specified or defined in the Stipulation or a finding that any particular claim is an administrative expense claim or other priority claim; (g) an admission as to the validity, priority, enforceability, or perfection of any lien

(Page | 6)

Debtors: BED BATH & BEYOND INC., *et al.*

Case No. 23-13359-VFP

Caption of Order: STIPULATION AND CONSENT ORDER BETWEEN THE DEBTORS
AND SAMA PLASTICS CORP. AND SAMA WOOD LLC

on, security interest in, or other encumbrance on property of the Debtors' bankruptcy estates;

(h) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to this Stipulation are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; or (j) relief from the automatic stay of section 362(a) of the Bankruptcy Code to enforce or seek collection of any claim directly against the Debtors or the Debtors' bankruptcy estates (including as it relates to the Prepetition Litigation), other than in accordance with the claim allowance provisions of the Bankruptcy Code and any applicable orders of this Bankruptcy Court.

9. No modification, amendment, or waiver of any of the terms or provisions of this Stipulation shall bind any Party unless such modification, amendment or waiver is in writing, has been approved by the Court, and has been executed by a duly authorized representative of the Party against whom such modification, amendment or waiver is sought to be enforced. If any part of this Stipulation is held to be unenforceable by any court of competent jurisdiction, the unenforceable provision shall be deemed amended to the least extent possible to render it enforceable and the remainder of this Stipulation shall remain in full force and effect.

10. This Stipulation shall be governed by and construed in accordance with the Bankruptcy Code and, where not inconsistent, the laws of the State of New Jersey, without regard to the conflict of laws principles thereof. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective successors, assignees, agents, attorneys and representatives.

(Page | 7)

Debtors: BED BATH & BEYOND INC., *et al.*

Case No. 23-13359-VFP

Caption of Order: STIPULATION AND CONSENT ORDER BETWEEN THE DEBTORS
AND SAMA PLASTICS CORP. AND SAMA WOOD LLC

11. Each of the Parties to this Stipulation represents and warrants it is duly authorized to enter into and be bound by this Stipulation.

12. This Stipulation may be executed in one or more counterparts, including by facsimile and/or electronic mail, each of which when so executed shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same Stipulation.

13. This Stipulation constitutes the entire agreement between the Parties in respect of the subject matter hereof and shall not be modified, altered, amended, or vacated without the prior written consent of all Parties hereto. No statement made or action taken in the negotiation of this Stipulation may be used by any Party for any purpose whatsoever.

14. The Parties acknowledge and agree that the Court shall retain jurisdiction over all disputes concerning or related to the subject matter of this Stipulation. Any request for relief brought before the Bankruptcy Court to resolve a dispute arising from or related to this Stipulation, and the matters agreed to herein, shall be brought on proper notice and in accordance with the relevant Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the District of New Jersey.

Dated: June 22, 2023

/s/ Michael D. Sirota

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**SAMA PLASTICS CORP. and SAMA WOOD
LLC**

/s/ Mark L. Wolfberg

Mark L. Wolfberg
Authorized Signatory